

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6036 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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IBRAHIM A PATEL

Versus

AHMED IBRAHIM BHAIJI

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Appearance:

MS SK VISHEN for Petitioner  
MR BS PATEL for Respondent No. 1  
MR VB GHARANIA AGP for Respondent No. 2

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/09/98

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. Gharania, learned AGP for respondent NO. 2 and Mr. B.S.Patel, learned advocate appearing for respondent No. 1.

2. The petitioner has moved this petition against the impugned order rendered by the learned Joint Charity Commissioner Vadodara in Miscellaneous Application No. 31 of 1998 whereby the learned Joint Charity Commissioner issued direction to the petitioner trust to accept the necessary membership fee from the first respondent firstly on or before 27th June, 1998 and, thereafter, every year within the prescribed time limit.

3. There is two fold grievance against the order impugned in this petition. Firstly, the learned Joint Charity Commissioner passed the impugned order without hearing the petitioner trust. Secondly, the learned Joint Charity Commissioner did not have the jurisdiction under section 41A of the Bombay Public Trusts Act, 1950 to pass such an order. In so far as the grievance with regard to jurisdiction is concerned, same can be presented before the learned Joint Charity Commissioner. However, since the impugned order has been passed without hearing the petitioner trust, same shall have to be quashed and set aside in so far as it relates to the subsequent years since for the current year, it has not survived. Following order is, therefore, passed :

The impugned order dated 25th June, 1998 rendered by the learned Joint Charity Commissioner without hearing the petitioner trust is hereby quashed and set aside in so far as it relates to the direction from year to year. The matter is remanded to the learned Joint Charity Commissioner who shall give opportunity of hearing to the petitioner trust as well as the first respondent and decide the matter afresh after hearing as aforesaid and strictly on merits without being influenced in any manner by this order. The learned Joint Charity Commissioner will also bear in mind the order dated 14th September, 1995 passed by the learned Joint Charity Commissioner, Vadodara in Appeal No. 21 of 1994 and accepted by the petitioner trust. The matter will be heard and decided as stated above as expeditiously as possible preferably within three months from the date of receipt of this direction. Rule is made absolute accordingly with no order as to cost.

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Vyas